FILE COPY

Office-Supreme Court, U.S.
FILED
MAR 25 1959
JAMES R. BROWNING, Clerk

In the

Supreme Court of the United States

October Term, 1958

No. 797

CATO BROS., INCORPORATED, WILFRED R. CATO, WILLIAM R. CATO AND MAGIE L. STONE,
Petitioners

v.

THE UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

A. C. EPPS
CHARLES W. LAUGHLIN
Counsel for Petitioners

CHRISTIAN, BARTON, PARKER & BOYD
506 Mutual Building
Richmond 19, Virginia
Of Counsel

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT	4
REASON FOR GRANTING THE WRIT	6
ARGUMENT	6
CONCLUSION	9

TABLE OF CITATIONS

Cases

Chicago & Northwestern Rwy. Co. v. Nye Schneider Fowler Co., 260 U. S. 35 (1922)	7
Missouri Pacific Rwy Co. v. Tucker, 230 U. S. 340 (1913)	8
Rex Trailer Co. v. United States, 350 U. S. 148 (1956)	7
Southwestern Telephone & Telegraph Co. v. Danaher, 238 U. S. 484 (1915)	8
United States ex rel Marcus v. Hess, 317 U. S. 537 (1942)	7, 8
United States v. Johnston, 138 F. Supp. 525 (W. D. Okl. 1956)	7
United States v. Rohleder, 157 F. 2d 126 (3rd Cir. 1946)	7

Statutes

Section 3490 of the Revised Statutes of 1878, 12 Stat. 696, 698	3
Section 5438 of the Revised Statutes of 1878, 12 Stat. 698	3

Constitution

	Page
Amendment V	2
Amendment VIII	3

Miscellaneous

28 U. S. C. 1254(1)	2
317 U. S. 551-552	9
356 U. S. 595	1

In the

Supreme Court of the United States

October Term, 1958

No. .....

CATO BROS., INCORPORATED, WILFRED R. CATO, WILLIAM R. CATO AND MAGIE L. STONE,
Petitioners

v.

THE UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above case on January 23, 1959.

OPINIONS BELOW

The opinion of the court of appeals in this case (A. 1; R. 5) is not reported as yet.

The opinion of the United States District Court for the Eastern District of Virginia is not reported (A. 8).

The opinion of this Court on its previous consideration of this case upon a different point is reported at 356 U. S. 595.

JURISDICTION

The judgment of the Court of Appeals in this case was entered on January 23, 1959 (A. 7). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). On February 24, 1959, the Court of Appeals entered an order extending for a period of 30 days from that date the period in which this petition might be filed (A. 8).

QUESTION PRESENTED

Is the interpretation of the False Claims Act in this case, as applied by the district court and affirmed by the court of appeals, constitutional under the Fifth and Eighth Amendments of the Constitution of the United States when it results in a recovery by the United States Government of $60,000.00 in forfeitures where there is an affirmative finding of fact by the district court that the government has not been damaged in any way?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U. S. CONST. amend. V.

CAPITAL CRIMES: DUE PROCESS

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U. S. CONST. amend. VIII.

EXCESSIVE BAIL, FINES, PUNISHMENTS

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Section 3490 of the Revised Statutes of 1878, 12 Stat. 696, 698:

"Sec. 3490 — Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the services of the United States, who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title 'Crimes', shall forfeit and pay to the United States the sum of Two Thousand Dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."

Section 5438 of the Revised Statutes of 1878, 12 Stat. 698:

"Sec. 5438 — Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval services of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, . . . shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than one thousand nor more than five thousand dollars."

STATEMENT

The jurisdiction of the district court in the initial proceedings in this case was based upon the False Claims Act, quoted above.

The pertinent facts in this case will be found in the findings of fact of the district court which have never been controverted by either side in all proceedings following that decision.

These findings were in pertinent part as follows (R. 1a):

"The Court having heard the evidence in the above case finds as a fact:

1. The defendant, Cato Bros., Incorporated, is a corporation organized and existing under the laws of the State of Virginia, doing business in Emporia, Virginia.

2. The defendant, Wilfred R. Cato, is a resident of Emporia, Virginia, and was at all times mentioned herein President and a Director of Cato Bros., Incorporated.

3. The defendant, William R. Cato, is a resident of Emporia, Virginia, and was at all times mentioned herein Secretary and a Director of Cato Bros., Incorporated.

4. The defendant, Magie L. Dunn (nee: Stone), is a resident of Emporia, Virginia, and was during the year 1948, Treasurer of Cato Bros., Incorporated.

5. None of the defendants mentioned herein is, nor at any time mentioned herein was, in the military or naval service of the United States or in the militia called into or actually employed in the service of the United States.

6. The Commodity Credit Corporation is a body corporate whose entire capital stock is subscribed by

the United States of America, and it is an agency and instrumentality of the United States.

7. On August 3, 1948, the Commodity Credit Corporation and the defendant, Cato Bros., Incorporated, entered into a Leading Agency Agreement, under which the defendant Cato Bros., Incorporated, was authorized to make loans to producers of 1948 crop cotton in accordance with the provisions of the said agreement.

8. During the year 1948, the defendants, Cato Bros., Incorporated, Wilfred R. Cato, William R. Cato and Magie L. Dunn (nee: Stone), did submit to the Commodity Credit Corporation, fifty-five (55) letters, transmitting a total of One Thousand One Hundred Seventy-Six (1,176) notes representing loans made pursuant to the Leading Agency Agreement.

9. The defendants, Cato Bros., Incorporated, Wilfred R. Cato, William R. Cato, and Magie L. Dunn (nee: Stone), transmitted to the Commodity Credit Corporation in thirty (30) of the aforementioned letters of transmittal a total of Seven Hundred Forty-eight (748) notes, in each of which letters there was at least one note covering cotton not actually produced by the person who signed the note as producer, and thus made and caused to be presented for payment to persons in the civil service of the United States, thirty (30) claims upon the Commodity Credit Corporation knowing the said claims to be false.

10. The cotton represented by the aforesaid improper notes was held by the Commodity Credit Corporation for an unreasonably long time, during which time it could have disposed of the said cotton at a profit.

11. The Commodity Credit Corporation failed to accept the offer of the defendants to repurchase the cotton at the price paid for the cotton by the said Corporation.

* * *"

From these findings of fact the Court concluded as a matter of law as follows:

"* * *

"4. The plaintiff has not suffered any legally recoverable damages due to the actions of the defendants.

5. The recovery by plaintiff of Sixty Thousand Dollars ($60,000.00) in forfeitures is Constitutional as a civil remedy, even though plaintiff has not suffered any legally recoverable damages due to the actions of the defendants.

* * *"

REASON FOR GRANTING THE WRIT

In this case the court of appeals has decided an important question of federal law which should be settled by this Court, as this decision, it is submitted by petitioners, is in conflict with the prior decisions of this court.

ARGUMENT

As Applied in This Case, the False Claims Act Violates the Fifth Amendment of the Constitution as a Denial of Due Process and Inflicts an Excessive Fine Prohibited by the Eighth Amendment.

In the present posture of this case the judgment of the district court, unless reversed, requires petitioners to pay the sum of $60,000.00 to the United States even though the district court has made an affirmative finding of fact that the government has not suffered and could not recover any damages. Since the lower court's construction of the False Claims Act reaches this result in this case, it is the contention of petitioners that the application of the Act is uncon-

stitutional here as a taking of petitioners' property without due process of law.

It has been settled beyond peradventure of a doubt by this Court that the False Claims Act (Sec. 3490) as written is civil in nature and does not provide for a criminal penalty. See *United States ex rel Marcus v. Hess*, 317 U. S. 537 (1942) and *Rex Trailer Co.* v. *United States*, 350 U. S. 148 (1956). The entire proceedings in the district court and all stages of the subsequent appeals in this matter have been conducted as if this were a civil proceeding, and properly so.

The question then arises: to what extent may a claimant in a civil suit recover forfeitures from a defendant where there is an affirmative showing that there has been no damage to the plaintiff? This question it is submitted has never been directly passed upon by this Court.

This Court has held that a recovery of forfeitures may be had civilly where there is room to speculate as to the possible or probable amount of damages suffered by a claimant, although such damages are not shown, or offered to be shown. In the *Rex Trailer* case, *supra*, the Court likened the forfeiture provision of the False Claims Act to a provision for liquidated damages.

Upon the theory that the forfeiture provision of the False Claims Act in effect provides for liquidated damages, courts have permitted recovery of forfeitures in certain cases when damages have not been alleged or if alleged have not been recovered for failure of proof. See *United States* v. *Johnston*, 138 F. Supp. 525 (W. D. Okl, 1956) and *United States* v. *Rohleder*, 157 F. 2d 126 (3rd Cir. 1946).

In commenting upon such provisions, this Court has also pointed out that if a forfeiture or penalty provision is arbitrary and oppressive in its actual operation then it will contravene the Constitution. See *Chicago & Northwestern Rwy. Co.* v. *Nye Schneider Fowler Co.*, 260 U. S. 35 (1922).

This Court has also held such a forfeiture provision unconstitutional when there is a gross disproportion between the possible actual damages and the amount of recovery. See *Missouri Pacific Rwy. Co.* v. *Tucker*, 230 U. S. 340 (1913).

If a provision for forfeiture is deemed arbitrary and oppressive in its application or grossly disproportionate to the possible actual damage to the government then this Court has stricken such a provision on the basis that it is a denial of due process of law. See *Southwestern Telephone & Telegraph Co.* v. *Danaher*, 238 U. S. 484 (1915).

The record contains no evidence upon which this Court or any other court can reach any other conclusion than that the application of the False Claims Act in this case is arbitrary, unreasonable, oppressive and bears no reasonable relationship to any possible actual damages to the government.

It should be noted that the government in its pleadings in this case attempted to recover every possible damage suffered by the government (R. 1a). Although proof was attempted upon this theory the trial court held that the government was entitled to nothing in the way of damages. What room is there left then to speculate upon the quantum of damages possibly suffered by the government in this case? The government has offered all the proof ever admissible on the question of damages and has merely proved that it can recover no damages. This being true, to what can we equate the $60,000.00 that the government is to recover in an attempt to judge its reasonableness and how can the result be anything but arbitrary and oppressive in such a circumstance? This Court pointed out in the *Hess* case, *supra*, that a recovery under the False Claims Act must bear some reasonable relation to the possible actual damage to the gov-

ernment and that the purpose of the Act was restitution. See 317 U. S. 551-552.

The fundamental error in the decision of the court of appeals is its conclusion that there is room for speculation and that the district court did not make a conclusive finding that there was no damage in this case. It escapes petitioners how the district court could have been more explicit in its finding. The court of appeals concluded further that the recovery here did not violate the Eighth Amendment as an excessive fine. Petitioners respectfully submit that such a recovery is certainly in the nature of a fine and is unquestionably excessive in the present circumstances.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

A. C. EPPS
CHARLES W. LAUGHLIN
Counsel for Cato Bros., Inc., Wilfred R. Cato, William R. Cato and Magie L. Dunn (Nee: Magie L. Stone)

CHRISTIAN, BARTON, PARKER & BOYD
506 Mutual Building
Richmond 19, Virginia
Of Counsel

March 24, 1959

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7333

CATO BROS., INCORPORATED, WILFRED R. CATO, WILLIAM R. CATO and MAGIE L. DUNN (nee: Magie L. Stone),
Appellants

v.

UNITED STATES OF AMERICA,
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT RICHMOND

Order

BRYAN, District Judge:

The Fifth Amendment's due process clause, contend the appellants, bars recovery of the $164,000 and $60,000 claimed in these two cases, respectively, as the aggregate of forfeitures under the False Claims Act,* because of the peculiar circumstances here. This statute exacts $2000, aside from damages, from "every person who makes . . . any claim . . . against the Government of the United States knowing such claim to be false . . . or fraudulent". The circumstances stressed are the affirmative finding of the trial

* 31 USCA 231; however, in reference the original of this statute, R.S. 3490, should be used, and for the statute therein adopted R.S. 5438, should be used instead of the present 18 USCA 287, because the former incorporated the latter as it read at the date of the former's original enactment in 1878.

court in one case of no "legally recoverable damages", and the disallowance in the other also of all damages, to the Government.

Conceding the Act in the letter to be valid, the appellants contend that the imposition of such a plurality of forfeitures, 30 in the Cato case and 82 in Toepleman, in the absence of any commensurate damages, proved or unproved, is unconstitutional. If the forfeiture is not in some measure referable to the damages suffered, the argument is, then there is no lawful basis for the taking which the forfeiture makes of the defendant. Further, if the Congress may fix the forfeiture without relation to damages suffered, the appellants urge, the Congress could mulct a defendant so severely that it would be the equivalent of punishing him criminally, regardless of how the amercement is denominated; yet in its enforcement the defendant would be without the safeguards of a criminal trial. The underlying question, thus, is how far may Federal legislation go in levying a pecuniary civil sanction.

The $60,000 forfeitures in the Cato case were based on the forwarding of 30 letters by the defendant to the Commodity Credit Corporation, each containing at least one fraudulent promissory note for a cotton producer's loan. In Toepleman, the forfeitures of $164,000 were founded on 82 fraudulent cotton notes likewise presented to the Commodity Credit Corporation. The early history of both cases appears in 242 F. 2d 359 and 356 U. S. 595.

The Supreme Court has upheld forfeitures under the Act, the appellants readily admit, and has declared them to be civil in nature. *U. S. ex rel. Marcus* v. *Hess*, 317 U. S. 537 (1943); *Rex Trailer Inc.* v. *United States*, 350 U. S. 148 (1956). But the validity accorded the forfeiture was dependent in these decisions, the appellants insist, upon a showing both of an actual suffering of damages by the

United States and a fair ratio of forfeiture to damages—a loss and reasonable indemnity. The issue now according to the appellants is the question suggested, but left open, in the Rex Trailer opinion by its restricted, ad hoc conclusion that, "On this record it cannot be said that the measure of recovery fixed by Congress in the Act is so unreasonable or excessive that it transformed what was clearly intended as a civil remedy into a criminal penalty".

The ready response to the appellants' argument is that in neither case here does the trial court find that there was no injury or damages sustained by the Government. The strongest finding — "The plaintiff has not suffered any legally recoverable damages due to the action of the defendants." — does not in a fair reading purport to exclude all injury and damages. Clearly, the judge meant no more than that no calculable damage was shown. But, surely, no proof is required to convince one that to the Government a false claim, successful or not, is always costly. Just as surely, against this loss the Government may protect itself, though the damage be not explicitly or nicely ascertainable.

The Act seeks to reimburse the Government for just such losses. For a single false claim $2000 would not seem exorbitant. Furthermore, even when multiplied by a plurality of impostures, it still would not appear unreasonable when balanced against the expense of the constant Treasury vigil they necessitate. Obviously, the Congress in fixing this sum as the amount of the forfeiture cannot be justly accused of taking it without cause or due process. The statute merely draws the halter on those two, hand in hand impostors, damnum absque injuria and injuria absque damnum.

Reasonable indemnity, however, is not the only measure of the forfeiture's validity. Without converting it into a

criminal penalty, a statutory forfeiture of money has always been demandable of a wrongdoer by civil process though its purpose and effect be punishment. The opinion in the Hess case accepts the civil forfeiture as a common juristic discipline. 317 U. S. 537, 549-551, and concurring opinion, p. 554. Indeed, it is exampled in many of the Acts of Congress: 8 USCA 1321, 1322 and 1323, penalties imposed upon anyone illegally landing aliens; 26 USCA (I.R.C. 1954) 6653, fraud penalty of 50% for income tax underpayment; 45 USCA 73, pecuniary forfeiture for failure of carrier to unload livestock at intervals. These sanctions are so far civil in character that the trial, upon their enforcement, includes such civil attributes as a directed verdict for the Government and, for recovery, proof by a preponderance of the evidence instead of beyond a reasonable doubt. *Helvering* v. *Mitchell,* 303 U. S. 391, 400, note 3, 402 (1938); *U. S.* v. *Grannis,* 4 Cir., 172 F. 2d 507 (1949), cert. denied 337 U. S. 918.

Cognizance of civil punishments is found, too, in the procedural provisions of the United States Code. Thus, inter alia, in 28 USCA we note: sec. 1355, jurisdiction of "action or proceeding for the recovery or enforcement of any * * * forfeiture pecuniary or otherwise"; sec. 1395, venue of "a civil proceeding for the recovery of a pecuniary * * * forfeiture"; cost on any order for a "civil fine or forfeiture of property"; Chapter 163, secs. 2461 and 2462, mode of recovery of "civil fine, penalty or pecuniary forfeiture".

Many of the States have adopted similar statutes, sometimes for the benefit of the injured person and at others in the public interest. True, when their aim has been solely to prevent or heal injury, some State enactments have occasionally been struck down as over reaching their purpose. *C. & N. W. Ry.* v. *Nye etc. Co.,* 260 U. S. 35, 40 ff (1922).

But, when fraud has been their target, we know of no vitiating decision.

The statutory monetary forfeiture, for the use of either the injured sovereign or the injured citizen, is often likened to punitive damages recoverable in a civil action for a wilfull wrong. This likeness, as well as their dissimilarity to a criminal fine, is marked, too, by an immunity from imprisonment for their non-payment.

Of course, punitive damages are held in check by the judgment of a jury or a court, and, to be sure, there is no such rein in the determination of the amount of a statutory forfeiture. On the other hand, the quantum of a civil punishment, as is a criminal penalty, is fixed by the legislature alone. But, we know, an unjustly oppressive criminal penalty is subject to judicial review under the Eighth Amendment. So, while the Eighth Amendment has generally been thought to apply only to criminal cases; *N. A. Woodworth Co.* v. *Kavanagh*, 102 F. Supp. 9, 13, aff. 202 F. 2d 154 (1953 cir. 6); *U. S.* v. *Stangland*, cir. 7 242 F. 2d 843, 848 (1957) there would seem to be no basis in reason why a court could not invoke the Eighth Amendment, either specifically or by analogy, to prevent an abuse of the power of punishment though it be only manifested in a civil form. Cf. *Geffen* v. *Baltimore Markets*, 325 Pa. 509, 191 A. 24, 28. But we have found no abuse here.

In sum, the circumstances disclose no Constitutional frailty in the assessment of the instant forfeitures. As pointed out, they rest on actual damages, whether proved or unproved; they rest on a firm basis of a reasonable civil punishment; and they rest on a foundation combined of these two.

Cross-error has been assigned by the Government in the Toepleman case to the disallowance of the damages claimed

in its complaint. The fraud tainting the notes consisted of the representation by this appellant that the pledged cotton had been produced by the makers of the notes, when in truth it had not been. Of the original 82 fraudulent notes, 43 went into default at maturity.

The notes, collateraled by the warehoused cotton, were negotiated with the Commodity Credit Corporation in 1948. The fraud was discovered in 1949. In April 1950 appellant offered to redeem all of the cotton at the amount of the unpaid notes plus a sum for the investigation expense of the Government. At that time the cotton could have been sold on the market at a small profit. The offer was not accepted. It was renewed in August 1951; it was never accepted. The cotton was not foreclosed until January 1955 and then at a loss of $6733.97. During these six years the market price of the cotton fluctuated, some times exceeding and at other times falling below the amount of the loan. Settlement negotiations were in progress throughout the period.

Under the formula of the statute, the United States in this action sought double the amount of its loss on the cotton. But the trial judge concluded that the loss was not due to the fraud. He reasoned that "the loss here where the Government held the cotton over six years would have been exactly the same had every bale of the cotton been eligible for loan and, consequently, no false claims filed".

We cannot agree with the trial court in this aspect of the case. But for the fraud the cotton would never have been the Government's responsibility. Having by his fraud thrust this burden on the United States, the appellant cannot be exonerated by the failure of the Government to cast it off at the most propitious time. The fraud was the effecting cause of the loss, the drop in the market a foreseeable incident. The amount of the loss not being in controversy,

judgment must go for the Government against the appellant for twice that sum, an aggregate of $13,467.94.

We affirm the final orders in the Cato case; we affirm the orders in the Toepleman case in respect to the forfeitures decreed, but vacate it insofar as it disallows a recovery of damages, now remanding the action for entry of a judgment to include the damages as well as the forfeitures.

Order in accordance with opinion.

Judgment

(Filed and Entered January 23, 1959)

This Court having on February 28, 1957, entered its judgment in the above entitled cause reversing the judgment of the said District Court appealed from insofar as it gives judgment against defendants; and the Supreme Court of the United States having on May 26, 1958, entered its judgment reversing the judgment of this Court and remanding the cause to this Court for further proceedings not inconsistent with the opinion of the Supreme Court, and the said cause having at the October term, 1958, been argued by counsel:

It is now here ordered by this Court that the judgment of this Court, entered in this cause on February 28, 1957, be, and the same is hereby, set aside and held for naught; and that the judgment of the said District Court appealed from in this cause, be, and the same is hereby, affirmed in accordance with the opinion of the Court filed herein.

January 23, 1959.

Simon E. Sobeloff
Chief Judge, Fourth Circuit

Order Staying Mandate

Upon the application of the appellants, by their counsel, and for good cause shown,

It is ordered that the mandate of this Court in the above entitled case be, and it is hereby, stayed pending the application of the appellants in the Supreme Court of the United States for a writ of certiorari to this Court, provided the application for a writ of certiorari is filed in the Supreme Court within 30 days from this date.

February 24, 1959.

Simon E. Sobeloff
Chief Judge, Fourth Circuit

IN UNITED STATES DISTRICT COURT

Richmond Civil No. 1841

June 21, 1956

Letter Opinion of Court

Gentlemen:

Re: United States v. Cato Brothers, Incorporated — Richmond Civil No. 1841 —

Upon consideration of the record, argument and briefs of counsel, I have reached the following conclusions concerning the above captioned case:

1. All defendants named violated the provisions of the Commodity Credit Corporation Act by filing and causing to be filed with the corporation claims based upon notes covering cotton produced by others;

2. The liability of the defendants is joint and several;

3. The Government may not recover for any loss sustained in the sale of the cotton involved, because:

(a) The cotton was held by the Government for an unreasonably long period of time during which it could have been sold at a profit and loss avoided; and

(b) The Government failed to accept the offer of the defendants to re-purchase the cotton at the price paid by the Government and thereby avoid a loss.

4. The liability of the defendants is $2,000.00 forfeiture for each violation of the Act.

5. The forfeitures for which the defendants are liable are $2,000.00 for each of the 31 letters transmitting notes signed by producers of the cotton.

6. The Court has no authority to mitigate or remit any part of the forfeitures provided by the Act.

7. Judgment should be entered in favor of the Government against the defendants jointly in the sum of $62,000.00.

See *United States, ex rel Marcus* v. *Hess*, 317 U. S. 537; *Rex Trailer Company* v. *United States*, 350 U. S. 148; and *United States* v. *Grannis*, 172 Fed. (2d) 507.

It has been my purpose to prepare and file a memorandum in lieu of findings of fact and conclusions of law. [fol. 121] However, due to some unanticipated matters, to do so would cause additional delay. Therefore counsel are requested to submit drafts of proposed findings of fact and conclusions of law, and judgment order, in accordance with the foregoing.

Very truly yours,

(s) Sterling Hutcheson
United States District Judge